

## ATTACHMENT B

### Section-by-Section Explanation of Proposed Amendments to Title 13, California Code of Regulations, Sections 2180-2194

*Note: The following summary explains the need for the various proposed amendments to the regulations pertaining to the Heavy-Duty Vehicle Inspection Program (HDVIP) and the Periodic Smoke Inspection Program (PSIP). The text of the proposed amendments is set forth in Attachment A. Some proposed amendments represent a change in regulatory policy while others simply nonsubstantive improvements or clarifications to the existing regulatory text. The first type is identified as “Policy change,” and the latter as “Non-policy change.” One area of non-policy changes is the addition of headings for various subsections and a reorganization of some provisions to make the regulations more user-friendly. Most of these changes are not separately discussed below. Subsection references are to the proposed new letters and numbers.*

#### Proposed HDVIP Amendments

#### Sections in Title 13, California Code of Regulations

##### Section 2180.            **Applicability**

- (a)        *Non-policy Change.*     Since there is only one item in this section, there is no need to label it “(a).”

##### Section 2180.1        **Definitions**

- (a)(1)&   *Policy change.*     The terms “post-repair inspection” and “post-repair test,”  
(2)        previously defined in (a)(21) and (22), have been modified to begin with “ARB,” to make clear the term describes only tests and inspections conducted by ARB inspectors. The terms are used in section 2186(b)&(c); the inspection or test may optionally be used as a demonstration of correction by a cited party, and may be required by the ARB where inadequate information is supplied or there is a second violation on a truck or bus within a year. Staff’s practice has been that these terms only apply to tests conducted by ARB inspectors. Note that in most circumstances, private tests and inspections will serve as part of the demonstration of correction. (section 2186(a)(3)&(4).)
- (a)(3)    *Non-policy change.*     Staff proposes deletion of the term “reduced” in order to clarify the definition of “basic penalty.” The original intent in defining the “basic penalty” as the “reduced” civil penalty of \$500 was to acknowledge that the \$500 penalty was

reduced from the potential statutory maximum of \$1500 under Health and Safety Code section 44011.6(h). However, this may have been confusing to some parties. There is no change to the original approach — the monetary penalty for a first level citation (other than for a school bus) is the sum of two penalties: (1) a fixed non-reducible \$300, plus (2) the basic \$500, for a total of \$800. The \$500 portion can be waived if the citation is cleared within the allotted time period.

- ~~(2)~~ *Policy change.* The definition of “certification level” is no longer needed since all references to the term in the regulations are being deleted. See the discussion of section 2182(a).
- (4) *Non-policy change.* The definition of “citation” has been clarified to reflect the fact that the citation is always to be issued to the owner rather than the operator of a noncomplying heavy-duty vehicle.
- (5) *Non-policy change.* The original language has been made more precise.
- (6) *Policy change.* Since the requirements in section 2186(a) for a demonstration of correction have been expanded, the definition of “demonstration of correction” is changed to refer to the documents required in section 2186(a); this includes situations where an owner or operator elects to conduct his/her own repairs. Although not expressly covered by the former definition, it has been ARB policy to accept owner conducted repairs in a demonstration of correction.
- (9) *Non-policy change.* The readability of the definition has been improved.
- (11) *Policy change.* The definition for a fleet has been modified to include two or more vehicles, aligning with the definition in the PSI program. This should have little practical significance.
- ~~(11)~~ *Non-policy change.* The definition for “full power position” is deleted because the term is no longer used in the regulations.
- (12) *Non-policy change.* The definition of “heavy-duty vehicle” has been conformed to the definition in section 1900(a)(6), Title 13, California Code of Regulations.
- (14) *Non-policy change.* Unnecessary words have been deleted.
- (15) *Non-Policy change.* The definition of an “inspector” has been broadened to reflect that, with the adoption of the PSI program, an inspector is likely to have the additional responsibility of enforcing the PSI program regulations, sections 2190-4.
- (16) *Non-policy change.* The definition of “issuance” has been made more precise.

- (17) *Non-policy change.* The amendment simplifies the existing language by deleting the reference to the ultimate disposition of “minimum penalty” funds in the Diesel Emission Reduction Fund. It is not necessary to specify the end use of the deposited money since it is already specified in Health and Safety Code section 44011.6(l). The amendments also reflect the relettering of former section 44011.6(h) of the Health and Safety Code.
- (18) *Policy change.* A definition of “notice of violation” has been added in connection with the new section 2185(b) provisions authorizing issuance of a notice of violation in lieu of a citation for a pre-1991 model diesel engine on the basis of a measured smoke opacity exceeding 55 percent but not exceeding 69 percent.
- (21) *Policy change.* The definition of “owner” has been revised. The amendments clarify that an “owner,” within the context of the HDVIP, can be the person or entity (other than the registered owner) that is shown to be legally responsible for the maintenance of the vehicle/engine. For example, when a citation is issued for a vehicle which is leased under terms that make the lessee responsible for the maintenance of the vehicle, the lessee will be treated as the owner if the lessor demonstrates the lessee’s responsibility. This reflects the staff’s practice under the original language. In addition, the amendments reflect the fact that trucks operated in California may be registered in provinces or other countries.

In addition, new language provides that the person identified as the owner on the registration document carried on a vehicle is presumed to be the owner unless that person demonstrates that another person is the owner. This avoids the burdensome need to present at the administrative hearing additional evidence of ownership of trucks registered in other states or countries.

~~(21)~~ *Non-policy change.* Revised definitions of these terms are in new (a)(1) and (2).  
&~~(22)~~

- (24) *Policy change.* Since the proposed HDVIP regulations will now be referencing the SAE J1667 smoke test procedure, it is necessary to add a definition for SAE J1667 to clearly identify the procedure being designated.
- (26) *Non-policy change.* Since the HDVIP will now be incorporating the SAE J1667 test procedure, the term “smokemeter” is being re-defined to require that it be designed in accordance with the SAE J1667 test procedure.
- ~~(27)~~ *Non-policy change.* The definition for “snap-idle” is deleted because the term is no longer used in the regulations.
- ~~(29)~~ *Non-policy change.* The definition for “test opacity” is no longer needed since the term is no longer used in the regulations.

- ~~(30)~~ *Non-policy change.* The definition of “test procedure” is deleted because the term is no longer used in the limited sense of referring only to the preconditioning sequence and smoke measurement process.

**Section 2181. Responsibilities During Inspection Procedure.**

- (a) *Non-policy change.* The term “powered” has been added for clarification.
- (a)(5) *Non-policy change.* Since the adopted SAE J1667 smoke test procedure does not require the use of a strip chart recorder, all references to a strip chart recorder are being deleted. Instead of signing the strip chart to acknowledge the test, the vehicle driver would now sign the smokemeter’s test report printout.
- (b) *Non-policy change.* The term “powered” has been added for clarification.
- (c)(2) *Non-policy change.* References to section 2182 have been changed to reflect the proposed amendments to that section.
- (c)(3) *Policy change.* A change is made to reflect the new “notice of violation” mechanism.
- (c)(4) *Policy change.* New language directs the inspector to issue a notice of violation in lieu of a citation for a pre-1991 model diesel engine on the basis of a measured smoke opacity exceeding 55 percent but not exceeding 69 percent, except where a notice of violation or citation has been issued for the vehicle in the preceding 12 months. This new mechanism is described in the proposed amendments to section 2185(b).
- (c) (5) *Policy change.* Staff proposes that the provisions on missing emission control labels be modified to require that the identification engine label be replaced (in order to determine the engine’s serial number or identification) upon written notification by the ARB, instead of merely requiring that the information be provided to the ARB. This revised approach will facilitate ARB’s efforts to properly identify vehicles in the field and limit computerized cross-checks to determine the status of the vehicle (i.e. whether or not any previous warnings were issued and whether the information was submitted.) Proposed new language distributed with the notice for the September 11, 1997 workshop has been revised to be consistent with the modified language in section 2182(c).

**Section 2182                      Heavy-Duty Vehicle Smoke Opacity Standards and Test Procedures;  
Excessive Smoke**

2182    *Non-policy change.*    The title to this section has been changed to be more informative by reflecting that the section also covers the smoke opacity standards and identifies what constitutes excessive smoke.

(a)    *Non-policy change.*    In order to improve the organization of section 2182, former subsections (a) and (b) have been identified as subsections (a)(1) and (a)(2), as they both establish smoke opacity standards.

(a)    *Policy change.*    The revisions reflect the changes to the opacity standards proposed by staff. The applicable standard for an engine will no longer be tied to an engine's federal smoke certification level (or the model year of the vehicle); instead, it will be based only on the model year of the engine. The 40 percent opacity standard will be applicable to 1991 and subsequent model-year engines, and the 55 percent opacity standard will apply to all pre-1991 model-year engines. This will simplify the standards and make them more straightforward.

*1991 model-year cutoff for 40 percent standard.* In the original regulations, all 1974 and subsequent model-year vehicles with federal peak smoke engine certification levels lower than 35 percent were subject to a 40 percent opacity standard; all others were subject to the 55 percent opacity standard. However, section 2185(b) (which is being deleted because it is no longer needed) provided that the only vehicles subject to a civil penalty for failing the 40 percent standard during the first year of the program were 1991 and subsequent model-year vehicles, and this was extended by the Executive Officer. In effect, this meant that all pre-1991 model-year vehicles were subject to a 55 percent standard. In conjunction with eliminating the references to federal certification peak opacity levels, the amendments make the pre-1991 model year cut-off permanent. Staff expects that this will have only a minor effect on passage rates in practice, since most pre-1991 engines that have failed the 40 percent opacity standard during roadside inspections have had opacity levels well in excess of 55 percent.

*Elimination of references to federal certification level.* This removes an element of complexity from the regulations that for three basic reasons is no longer needed. First, as noted above, all pre-1991 model-year engines will automatically be subject to the 55 percent opacity standard. Second, since the 1994 model year (the 1991 model year for urban bus engines), all heavy-duty diesel-fueled engines have had to certify to a 0.1 gr/bhp-hr particulate standard. Certification to this low particulate standard assures that the federal certification peak smoke opacity levels for these engines will uniformly be well below 35 percent, eliminating the need to account for higher federal certification smoke opacity levels from these late-model engines. And third, for the remaining 1991-1993 model-year engine families, there is less of a need for automatic exemptions

based on the federal certification peak opacity levels because of the designation of SAE J1667 in place of SAE J1243. The SAE J1667 type smokemeter reads, on average, 5 to 10 percent opacity points less for mechanical and electronic engines, respectively, compared to SAE J1243 smokemeters.

*References to model-year of the engine.* The original standards referred to the model-year of the vehicle, even though the model-year of the engine is determinative of the applicable certification emission standards. The proposed amendments refer only to the model-year of the engine.

Also see the discussion in Section III.C. and D. of the Staff Report on the effect of the 40 percent and 55 percent opacity standards when the SAE J1667 test procedure is used.

- (b) *Non-policy change.* In order to improve the organization of section 2182, the exemption provisions in (c), (d) and (f) have been consolidated into (b)(1),(2) and (3).
- (b)(1) *Non-policy change.* Provisions have been clarified and unnecessary language has been eliminated without substantive change. The allowance of exemptions, when warranted, will continue.
- (b)(2) *Non-policy change.* Provisions have been clarified and unnecessary language eliminated without substantive change. The allowance of exemptions, when warranted, will continue.
- (b)(3) *Non-policy change.* Since an engine qualifying for an exemption under the preexisting provisions would qualify under the amendments, language is added “grandfathering in” exemptions that were issued and in effect as of January 1, 1996.
- (b)(4) *Policy change.* (Previously subsection (f)). The references to peak opacity certification levels are no longer relevant and have been deleted. Provisions on notifications from engine manufacturers regarding newly-certified engines that qualify for exemptions have been deleted because 1997 and subsequent model-year engines certified to the 0.1 grams per brake horsepower hour particulate standard should not smoke. However, provisions referring to the need for the manufacturer to supply the ARB with the pertinent test data when seeking an exemption are still necessary and are being retained, with various clarifications.
- (c) *Policy change.* (Previously subsection (e).) As stated in the discussion of section 2181(c)(4), staff is proposing that the requirements in former section 2182(c) be modified to require that the identification engine label be replaced (so that the engine’s serial number or identification can be determined) upon written notification by the ARB, instead of merely requiring that the information be provided to the ARB. This revised

approach will facilitate ARB's efforts to properly identify vehicles in the field and limit computerized cross-checks to determine the status of a vehicle being inspected (i.e. whether or not any previous warnings were issued and whether the information was submitted). Proposed new language distributed in connection with the September 11, 1997 workshop imposed a conclusive presumption that a vehicle is subject to the more stringent 40 percent opacity standard where the emissions label is not timely replaced. A subsequent proposed modification makes the presumption inapplicable if at the time of the subsequent test it is plainly evident from a visual inspection that the vehicle is powered by a pre-1991 engine. In such a case, application of the presumption is inappropriate.

- (d) *Non-policy change.* Health and Safety Code section 44011.6(a), added by AB 1460 in 1996, expressly prohibits the use of a heavy-duty motor vehicle that emits excessive smoke. To facilitate enforcement of this statute, a new subsection would be added stating that a heavy-duty vehicle has excessive smoke if it fails to comply with the applicable smoke opacity standard.
- (e) *Policy change.* (Previously subsections (g) and (h)). Per staff's basic proposal, language would be added stating that smoke opacity is to be determined in accordance with SAE J1667. Prior subsections (g) and (h), which specified the smoke opacity equipment and test procedure steps, would be deleted. By simply identifying the SAE J1667 procedures, specific testing details need not be specified in the regulation.

#### **Section 2183. Inspection of the Emission Control System on a Heavy-Duty Vehicle**

*Non-policy change.* Title of section revised to be more readable.

#### **Section 2184. Refusal to Submit to Inspection Procedure.**

- (a) *Non-policy Change.* Since there is only one item in this section, there is no need to label it "(a)."

#### **Section 2185 Civil Penalty Schedule.**

- (a)(1) *Non-policy change.* Unnecessary language is being deleted. These changes are also made in (a)(2) and (a)(3). Also, language is added to clarify that the minimum penalty does not apply where the owner or driver refuses to submit to the test procedure; otherwise there would be an incentive to make such a refusal.
- (a)(2) *Non-policy change.* Language is added to clarify that where the owner or driver

refuses to submit to an inspection for the first time, the penalty is the \$300 minimum penalty plus the \$500 basic penalty.

- (b) *Policy change.* The former language has been deleted. It is no longer pertinent since vehicles with pre-1991 model-year engines will no longer be subject to the 40 percent opacity standard.

New language has been added providing for issuance of a notice of violation rather than a citation for a heavy-duty vehicle powered by a pre-1991 model-year diesel engine on the basis of a measured smoke opacity exceeding the 55 percent standard but not exceeding 69 percent, and no notice of violation or citation has been issued for the vehicle in the preceding 12 months. If the owner provides a demonstration of correction within 45 days from receipt of the notice of violation, the owner will not be subject to any penalty. If a demonstration of correction is not provided within that time period, a citation will be issued. If the cited vehicle has not been cited within the previous year, the owner will be subject to the \$800 penalty; if the cited vehicle *has* been cited within the previous year, the owner will be subject to the \$1800 penalty.

Where a pre-1991 engine inspected under the HDVIP has a measured opacity exceeding 55 percent but not exceeding 69 percent within one year of issuance of an NOV for which a timely demonstration of correction was issued, a citation will be issued and the penalty will be \$800. If the opacity is measured within that range and a citation had been issued for the vehicle within the preceding year, a citation will be issued and the penalty will be the \$1800 — the penalty applicable for second citations within a year. This higher penalty would apply both for prior citations issued in the first instance, and prior citations issued after the owner failed to make timely repairs in response to an NOV.

These requirements are discussed in Section IV.C. of the Staff Report.

- (c) *Non-policy change.* Clarifying language is substituted, without substantive effect.
- (d) *Non-policy change.* Clarifying language has been added to make sure that existing policy is appropriately characterized.
- (e) *Non-policy change.* Clarifying language is added, without substantive effect.

**Section 2186. Demonstration of Correction and Post-Repair Test or Inspection.**

- (a)(1) *Non-policy change.* The original subsection (a) provisions on submittal of a demonstration of correction only covered documentation of repairs made at a repair facility, or fleet repair maintenance facility. However, it was ARB's practice to accept a receipt for parts if the owner conducted his or her own repairs outside a repair facility or
- &(2)



fleet facility. The text has been clarified so that the original provisions only apply where the repair is made at a repair or fleet facility. A new subsection (a)(2) is added for owners who conduct their own repairs outside repair or fleet facilities; in this case the owner is to submit an itemized receipt for parts and a statement identifying the date and nature of the repairs made.

- (a)(3) *Policy change.* The original regulations did not expressly require that, following repairs, a cited truck must be retested in order to determine whether the repairs are sufficient for the truck to meet the opacity standard. Proposed new language is added to require such a retest and submittal of the pertinent test report with a short declaration by the retester as part of the demonstration of correction. This is a particularly important element in the case of owners of heavy-duty vehicles that receive a notice of violation, since waiver of the normal penalties is dependent on assurance that there have been sufficient repairs to enable the vehicle to meet the applicable 55 percent opacity standard. Similarly, new language is added requiring that, where a citation is issued because of failure of a visual inspection, the demonstration of correction must include a declaration that the components identified in the citation have been reinspected and have been determined to be in good working order.
- (b) *Non-policy change.* Clarifying change to more accurately describe the documents submitted when an owner uses the section (a) demonstration of correction option.
- (c) *Non-policy change.* Clarifying change to note the term “inspection” is meant to mean a post-repair inspection.

## **Section 2187            Vehicles Removed from Service**

- (c) *Non-policy change.* The redundant phrase “fifteen calendar” is being deleted.

## **Section 2188            Contesting a Citation**

*Non-policy change.* New section 2188 is being added so that a person reviewing only the HDVIP regulations would be made aware that a citation can be contested under the established administrative hearing process in sections 60075.1 et seq., title 17, California Code of Regulations. Staff expects that the Board will consider amendments to the administrative hearing regulations at a hearing in Spring 1998.

## **PSIP Amendments**

### **Sections in Title 13, California Code of Regulations**

#### **Section 2190. Vehicles Subject to the Periodic Smoke Inspection Requirements**

- 2190 *Non-policy Change.* An appropriate title has been added. A revised date of applicability for these regulations of July 1, 1998 has also been specified — about six and a half months after the planned December 11, 1997 hearing. This much lead time will probably be needed to assure compliance with all of the rulemaking requirements. Identifying a specific effective date during the rulemaking process will give the regulated public more certainty.
- (b) *Non-policy change.* It is not necessary to refer to the specific definition for “fleet” since the definition in section 2191(a) automatically applies.

#### **Section 2191. Definitions.**

- (a)(2) *Non-policy change.* The definition for “inspector” is no longer needed since the revised definition of “inspector” in the HDVIP regulations (section 2180.1(a)(15)) will be identical and automatically applicable.
- (a)(2) *Non-policy change.* The definition for “test opacity” has been made more precise.
- (a)(4) *Non-policy change.* It is not necessary to define “test procedure” since the term’s meaning in the regulations is evident.

#### **Section 2192. Vehicle Inspection Responsibilities.**

- (a)(8) *Non-policy change.* This provision has been made more precise.

#### **Section 2193. Smoke Opacity Inspection, Intervals, Standards, and Test Procedures.**

- (a) *Non-policy change.* Subsection (a), which lists the required periodic testing intervals for a fleet, has been broken up to enhance clarity; there are no substantive changes other than the new start date of July 1, 1998. Subsection (a) will apply to the initial phase-in requirements for vehicles that are subject to the PSI program as soon as it is up and running on July 1, 1998. Subsection (a)(1) covers the initial phase-in requirements for fleets of five or more vehicles, and (a)(2) applies to fleets of two to four vehicles. The

last portion of former subsection (a), which addressed the phase-in for new fleets that become subject to the PSI program for the first time at some point *after* July 1, 1998, is relettered as subsection (b). Various provisions are made more precise.

- (c) *Non-policy change.* Former section (b), which identifies the required annual testing schedule that applies after the initial phase-in period, has been revised for clarity. A heading has also be added.
- (d) *Policy change.* A new subsection has been added providing a “rolling” exemption during the first four model years for 1994 and subsequent model-year engines. The exemption would last until January 1 of the calendar year that is four years after the model year of the engine. For example, a 1995 model-year engine would be exempt until January 1, 1999, and would be considered to have been acquired on that date. As discussed in the Staff Report, these vehicles are expected to have a failure rate of only about 1 percent due to the newness of the engines and stricter emission standards.
- (e) *Policy change.* Former section (c), which specifies the standards and test procedures that apply to fleet testing, has been amended to reflect staff’s proposed policy of identifying SAE J1667 as the applicable test procedure, referencing the proposed revised HDVIP standards, and allowing the limited use of the previously designated test procedures — based on SAE J1243 — during the first year of the program.

Section (e)(1) provides that the SAE J1667 test procedures and applicable standards specified in the HDVIP regulations will apply in the PSI program to the title 13 regulations as the regular testing procedures to follow, except as otherwise provided in subsection (e)(2).

Section (e)(2) allows the continued use of the old SAE J1243-type smokemeters for those fleets which do not have an operable SAE J1667 smokemeter, for one year, until July 1, 1999.

Section (e) (3) re-states the relevant aspects of the previous SAE J1243-based HDVIP procedures which fleets employing SAE J1243 type smokemeters must follow. Section (e)(3)(A) sets forth the original standards (making clear that all pre-1991 model-year engines are subject to the less stringent 55 percent opacity standard); section (e)(3)(B) re-specifies the original SAE J1243 smokemeter performance requirements, and section (e)(3)(C) re-specifies the original test procedures.

#### **Section 2194. Record Keeping Requirements**

- (a)(2) *Non-policy change.* A conforming amendment has been made to acknowledge that the required strip chart information need only be maintained if an SAE J1243 smokemeter is employed.